

Atty Dkt. No.: LIFE-040
USSN: 09/988,494

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims 1-32 are pending after entry of the amendments set forth herein.

Claims 1-10 were examined. Claims 1-10 were rejected. No claims were allowed.

Claims 1-3 and 7 are amended. The amendments to these claims were made solely in the interest of expediting prosecution, and are not to be construed as an acquiescence to any objection or rejection of any claim.

Claims 11-32 are canceled without prejudice to renewal, without intent to acquiesce to any rejection, and without intent to surrender any subject matter encompassed by the canceled claims. Applicants expressly reserve the right to pursue any canceled subject matter in one or more continuation and/or divisional applications.

Support for the amendments and new claims 33-42 is found in the claims as originally filed, and throughout the specification, in particular at the following exemplary locations: page 7, lines 3-6, page 7, lines 12-14, page 6, lines 28-30 and page 15, lines 16-19. Accordingly, no new matter is added by these amendments.

Please replace the claims with the claim set provided above.

Applicants respectfully request reconsideration of the application in view of the remarks made herein.

Rejection under 35 U.S.C. §102- Ouyang

Claims 1-2 and 4-10 are rejected under 35 U.S.C. §102(a) as being anticipated by Ouyang et al. The Applicants respectfully traverse this rejection.

Without acquiescing to the correctness of this rejection, claim 1 has been amended to recite a flavin agent in an amount effective to stabilize the claimed composition. As such, any anticipatory reference must disclose a composition containing a flavin agent in an amount effective to stabilize the composition.

Ouyang states that FAD or FMN must be added to the composition disclosed therein as an enzyme cofactor (see Ouyang, page 5, line 9-11). Although no specific amounts of FAD are recited by Ouyang, the amount of FAD or FMN added to the disclosed composition to provide a cofactor would be well below the amount of FAD or FMN that would be required for stabilization of the disclosed

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composition. As such, by describing a composition containing FAD or FMN as an enzyme cofactor, Ouyang does not disclose a composition containing a flavin agent in an amount effective to stabilize the composition. Accordingly, Ouyang cannot anticipate the claims, since the claims require a flavin agent in an amount effective for stabilizing the composition.

In other words, the amount of a flavin agent that is required to stabilize the claimed composition is much higher than the amount of a flavin agent that would be added as a cofactor. Ouyang, by only disclosing a composition having a flavin agent cofactor, therefore fails to teach a limitation of the claimed invention. As such, Ouyang cannot anticipate the rejected claims.

Similarly, Ouyang cannot anticipate claim 33 since this claim recites a specific amount of a flavin agent which is not disclosed by Ouyang.

In view of the foregoing discussion, withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. §102- Nippon Chemiphar Co

Claims 1-2 and 4-5 and 8-9 are rejected under 35 U.S.C. §102(b) as being anticipated by Nippon Chemiphar Co et al. The Applicants respectfully traverse this rejection.

Without acquiescing to the correctness of this rejection, claim 1 has been amended to recite a flavin agent in an amount effective to stabilize the claimed composition. As such, any anticipatory reference must disclose a composition containing a flavin agent in an amount effective to stabilize the composition.

Like Ouyang, Nippon Chemiphar Co describes a composition in which a flavin mononucleotide is present as an enzyme cofactor, not in an amount effective for stabilizing the composition.

The amount of a flavin agent that is required to stabilize the claimed composition is much higher than the amount of a flavin agent that is required as a cofactor. Nippon Chemiphar Co, by only disclosing a composition having a flavin as a cofactor, therefore fails to teach a limitation of the claimed invention. As such, Nippon Chemiphar Co cannot anticipate the claims.

Similarly, Nippon Chemiphar Co cannot anticipate claim 33 since this claim recites a specific amount of a flavin agent which is not disclosed by this reference.

In view of the foregoing discussion, withdrawal of this rejection is respectfully requested.

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Rejection under 35 U.S.C. §102- Geisler

Claims 1, 3-4, 6 and 8-10 are rejected under 35 U.S.C. §102(b) as being anticipated by Geisler. The Applicants respectfully traverse this rejection. This rejection is addressed to claim 3 and new claims 34-41 since they recite Group IIIA compounds.

Claim 3 and new claims 35-41 depend on new claim 34 and are therefore directed to compositions in which a Group IIIA compound and a tetrazolium dye are present at a molar ratio of about 50 to about 800.

Geisler fails to disclose an element of the claimed invention: a composition in which a Group IIIA compound and a tetrazolium dye are present at a molar ratio of about 50 to about 800, and, accordingly, cannot anticipate the claims.

In view of the foregoing discussion, withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. §102- Steinbach

Claims 1-2 and 4, 6 and 8 are rejected under 35 U.S.C. §102(b) as being anticipated by Steinbach et al. The Applicants respectfully traverse this rejection.

Without acquiescing to the correctness of this rejection, claim 1 has been amended to recite a flavin agent in an amount effective to stabilize the claimed composition. As such, any anticipatory reference must disclose a composition containing a flavin agent in an amount effective to stabilize the composition.

Like Ouyang, Steinbach describes a composition in which a flavin mononucleotide is present as an enzyme cofactor, not in an amount effective for stabilizing the composition.

The amount of a flavin agent that is required to stabilize the claimed composition is much higher than the amount of a flavin agent that is required as a cofactor. Steinbach, by only disclosing a composition having a flavin as a cofactor, therefore fails to teach a limitation of the claimed invention. As such, Steinbach cannot anticipate the claims.

Similarly, Steinbach cannot anticipate claim 33 since this claim recites a specific amount of a flavin agent which is not disclosed by this reference.

In view of the foregoing discussion, withdrawal of this rejection is respectfully requested.

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Rejection under 35 U.S.C. §103- Nippon in view of Geisler

Claims 1-10 are rejected under 35 U.S.C. §103 as being obvious over Nippon in view of Geisler.

The instantly claimed compositions either have a flavin agent in an amount effective to stabilize the claimed composition, or a Group IIIA compound and a tetrazolium dye that are present at a molar ratio of about 50 to about 800.

Since, neither a flavin agent in an amount effective to stabilize a composition, or a Group IIIA compound and a tetrazolium dye present at a molar ratio of about 50 to about 800 are disclosed, taught, or otherwise suggested by either of the cited references, the cited references, taken together or in combination, cannot suggest these claim limitations.

Since the cited references don't suggest limitations that are recited in the claims, the claimed subject matter cannot be obvious in view of Nippon in view of Geisler.

Accordingly, this rejection may be withdrawn.

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CONCLUSION

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number LIFE-040.

Respectfully submitted,
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Date: August 4, 2003

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